

CHAPTER 22 PROCUREMENT REGULATIONS

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2200 GENERAL PROCEDURES

- 2200.1 The purpose of these Procurement Regulations is to set forth the policies and procedures of the Public Service Commission of the District of Columbia (Commission) with respect to the procurement of supplies, materials, equipment, and professional services through formal advertising, negotiation or sole source.
- 2200.2 The Commission is an independent agency, as such, is empowered to issue rules and regulations for the awarding of contracts pursuant to existing law (D.C. Code §1-1182.4(a) (1992 Repl. Vol.)). Moreover, as an independent agency, the Commission is exempt from the District of Columbia procurement rules as set forth in D.C. Code §§1-1182.4(a) and (c) (1992) Repl. Vol.). These Procurement Regulations adhere to the requirements set forth in Title 27 DCMR, *Contracts and Procurement*, as well as other applicable laws, such as the Equal Opportunity Business Enterprise Act of 1992 (D.C. Law 9-217). To the extent that these regulations fail to comply with Title 27 DCMR, Title 27 DCMR shall govern.
- 2200.3 All purchases and contracts, except as specifically excepted herein, shall be made on a competitive basis.
- 2200.4 Negotiated contracts may be authorized only if the exemptions to formal advertising, as set forth herein, are applicable.
- 2200.5 It shall be the policy of this Commission that, to the fullest extent possible, and in the absence of a waiver by the Contracting Officer, all contracts shall be firm-fixed price contracts.
- 2200.6 The Chairman of the Commission is the contracting Officer of the agency and has the authority to enter into contracts on behalf of the Commission. The Chairman may from time to time delegate all, or part, of this responsibility. The Contracting Officer has the responsibility for the review and approval of all contracts for supplies, materials, equipment, and consultant services on behalf of the

Commission In the exercise of such authority, the Contracting Officer is subject to the procedures established by this chapter.

AUTHORITY: Unless otherwise noted, the authority for this chapter is Paragraph 97(b) of §8 of An Act Making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 977); as amended by §2 of the Public Utilities Amendment Act of 1989, D.C. Law 8-47, D.C. Code 43-501 (1990 Repl. Vol.).

SOURCE: Final Rulemaking published at 42 DCR 5126 (September 8, 1995).

2201 FORMS OF PROCUREMENT

- 2201.1 Requests for Proposals (RFPs) shall be used to solicit professional services under competitive sealed bidding procedures.
- 2201.2 Invitations for Bids (IFBs) shall be used to solicit goods, other than professional services, under competitive sealed bidding procedures.
- 2201.3 Purchase Orders (POs) may be utilized by the Commission for competitive purchases under ten thousand dollars (\$10,000).
- 2201.4 POs in excess of two hundred fifty dollars (\$250) shall be supported by a written contract.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5127 (September 8, 1995).

2202 CONTRACTS

- 2202.1 It shall be the policy of the Commission to procure goods or services through advertising, unless specifically excepted in this section.
- 2202.2 Competitive contracts shall be advertised in local newspapers or journals. Mailing lists may also be used to notify potential respondents of the need for products or services. The Commission shall advertise RFPs and IFBs in at least one local commercial newspaper for a period of not less than three (3) consecutive days or two (2) consecutive Sundays, as appropriate. In formal advertising, sealed bids or proposals are submitted in response to IFBs and RFPs. Bids or proposals shall be opened in the presence of witnesses at a predetermined time and place, recorded and then submitted to the Contract Representative for evaluation and processing.
- 2202.3 Small purchases may be excepted from the advertising requirement.
- 2202.4 A procurement for an amount of two hundred fifty dollars (\$250) or less may be made without obtaining competitive quotations if the Contract Representative determines the price to be reasonable. Non-competitive purchases shall be distributed equitably among suppliers as much as practical. When practical, a quotation shall be solicited from a vendor other than the previous supplier before placing a repeat order.
- 2202.5 A procurement that falls between two hundred fifty-one dollars (\$251) and nine thousand nine hundred ninety-nine dollars (\$9,999) shall be supported by three

(3) written quotations. The Contract Representative shall select the lowest written bid. If for any reason the lowest bid is not selected, the Contract Representative shall submit a Determination and Findings Statement (D&F) supporting the selection of other than the lowest bid.

- 2202.6 For negotiated purchases for goods or services less than ten thousand dollars (\$10,000) but more than two hundred fifty dollars (\$250), the Contract Representative shall prepare a D&F to support use of the negotiated procedure as defined under one or more of the following exceptions which permit negotiation: public exigency, sole source or expert or consultant services. The D&F shall be reviewed and approved by the Procurement Committee.
- 2202.7 All procurements in excess of ten thousand dollars (\$10,000) shall be advertised and competitively awarded, unless specifically excepted in this section.
- 2202.8 Procurements shall not to be broken into separate purchases for the purpose of avoiding formal advertising or other requirements under this chapter.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5127 (September 8, 1995).

2203 NEGOTIATED CONTRACTS

- 2203.1 No contract shall be negotiated unless authorized by one of the exceptions to formal advertising and is in compliance with the following requirements:
- (a) At least three (3) proposals from qualified suppliers have been solicited, except where a lesser number is justified by the Contract Representative;
 - (b) The prospective contractor has been determined by the Contract Representative to possess necessary capabilities;
 - (c) The procurement by negotiation is considered to be to the best advantage of the Commission, price and other factors considered; and
 - (d) All proposals are supported, to the maximum extent possible, by statements of cost data and other evidence of reasonableness of price and any other information considered appropriate.
- 2203.2 Negotiated procurements shall be made on a competitive basis to the maximum extent practical.
- 2203.3 The Contract Representative shall review and substantiate the need for a negotiated contract in the D&F.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5128 (September 8, 1995).

2204 SOLE SOURCE CONTRACTS

- 2204.1 The Commission shall identify the sole contractor considered capable of meeting its minimum needs and conduct negotiations with that contractor. The Contract

Representative shall justify the need, in writing, for the goods or services and establish that the following apply:

- (a) The requirements cannot be modified to allow procurement by competitive bids or proposals; and
 - (b) It is in the best interest of the Commission to meet its requirement through procurement of the specific supplies or services and that the proposed contractor is the only source for the specific supply or service.
- 2204.2 Each Contract Representative shall take all reasonable steps to avoid using sole source procurements except under circumstances where it is both necessary and in the best interests of the Commission.
- 2204.3 Sole source procurement shall not be justified on the basis of any of the following:
- (a) The lack of adequate advanced planning for the procurement of the required commodities, services or other items;
 - (b) Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
 - (c) Pending expiration of budget authority.
- 2204.4 If the reason for making the procurement on a sole source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies or services, the Contract Representative shall clearly support this conclusion in the determination and findings.

SOURCE: Final Rulemaking published at 42 DCR 5126 , 5129 (September 8, 1995).

2205 EXPERT OR CONSULTANT SERVICES

- 2205.1 Contracts for expert or consultant services may be authorized when essential to the agency's mission and when those services would achieve maximum efficiency or economy of operations where the following occurs:
- (a) The professional or technical expertise is not available from sources within the Commission or from another District government agency;
 - (b) Outside points of view are required to avoid too limited a position on critical issues; or
 - (c) The opinion of experts is necessary to fully address issues before the Commission.
- 2205.2 The Contract Representative shall ensure that a contract for expert or consulting services does not establish or allow any of the following:

- (a) An employer-employee relationship between the District and the contractor;
- (b) Detailed control or supervision by Commission personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
- (c) A regularly established tour of duty for the contractor; or
- (d) Supervision of Commission employees by the contractor.

2205.3 The Contract Representative shall determine that the contract for expert or consulting services, rather than the use of agency employees, is in the best interests of the Commission for one of the following reasons:

- (a) The services are needed for short periods only or are needed in connection with a specific project that is to be completed within a specified period of time;
- (b) The services are difficult to obtain due to scarcity of skilled personnel or because the services are of a highly specialized nature; or
- (c) The workload of Commission personnel preclude their availability to provide such services.

2205.4 The Contract Representative shall not recommend contracting for expert or consulting services for any of the following purposes:

- (a) To perform work of a decision-making, or managerial nature that is the direct responsibility of agency officials;
- (b) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;
- (c) To aid in influencing or enacting legislation in the Council of the District of Columbia; or
- (d) To afford preferential treatment to former Commission employees.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5130 (September 8, 1995).

2206 CONTRACTS WITH LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISES

2206.1 The Equal Opportunity for Local, Small, and Disadvantage Business Enterprises Act of 1992 (Act) establishes a fifty percent (50%) goal for District government contracts with local, small business enterprises and provides a preference for local and disadvantaged business enterprises in all areas of District government contracting. All Commission purchases shall be governed by, and subject to, the Act.

2206.2 Preference points, pursuant to the Act, shall be available to businesses in the following classifications:

- (a) Local Business Enterprises;
- (b) Disadvantaged Business Enterprises; and
- (c) Vendors Located in Enterprise Zones.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5131 (September 8, 1995).

2207 SUSPENSION AND INELIGIBILITY

2207.1 No firm or individual under suspension or otherwise ineligible to participate in procurement at any other District of Columbia government agency shall be eligible to participate in procurement solicitations, negotiations or bidding before this Commission.

2207.2 The Commission may suspend any firm or individual for any of the following reasons:

- (a) Contract fraud or an offense incident to obtaining, attempting to obtain, or performance of a public contract;
- (b) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals;
- (c) Commission of acts involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty; and
- (d) Conviction for a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.

2207.3 The Commission may suspend any firm or individual, other than for cause, if there exists a serious and compelling reason affecting responsibility, as may be determined by the Commission, to warrant suspension.

2207.4 The Commission, at its sole discretion, may bar any bidder or contractor from any solicitation, negotiations or bidding as a result of the following:

- (a) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract;
- (b) A record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of one (1) or more contracts; or
- (c) False assertion of a status giving rise to special benefits under the laws of the District of Columbia.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5131 (September 8, 1995).

2208 CONTRACT AWARDS, MODIFICATIONS, DISPUTES AND TERMINATIONS

- 2208.1 The Office of the Commission Secretary shall submit notices of solicitation and awards for contracts, as well as contract modifications and amendments, over ten thousand dollars (\$10,000) to the D.C. Department of Administrative Services for publication in the "District of Columbia Procurement Digest."
- 2208.2 Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation, negotiation, bidding, or awarding of any contract may file a written protest with the Office of the Commission Secretary. The protest shall clearly set forth the facts and legal basis of the protest. Protests shall be filed within ten (10) business days of the solicitation, award or event giving rise to the protest.
- 2208.3 The Commission may, at its sole discretion, modify, amend or adjust any contract. All contract modifications and amendments shall be made in writing prior to the effective date of the change. The term "modify" as used in this subsection shall not be construed to mean the incorporation of additional tasks and duties which substantially alter the scope of the contract.
- 2208.4 The Commission, at its sole discretion, may require a performance bond, or other form of security, to ensure contractor performance.
- 2208.5 The Commission, at its sole discretion, may terminate a contract for any reason prior to its completion under the following conditions::
- (a) For cause, if the Commission determines that the performance under the contract is unsatisfactory, the Contracting Officer may, upon written notice, terminate the contract. If the contract is terminated for cause, the contractor is not entitled to receive any compensation and shall be liable to the Commission for the costs entailed in securing another contractor for supplies or services or for the cost of completion in a contract for construction; and
 - (b) For convenience, if the Contracting Officer determines that it is in the best interest of the Commission to terminate the contract, he or she may do so upon the approval of the Commission. Upon termination for convenience, the contractor is entitled to receive compensation for services rendered.
- 2208.6 Claims and disputes shall be handled as follows:
- (a) When a claim or dispute is raised that cannot be resolved between the contractor and the Contract Representative, the contractor may, upon written request within ten (10) business days of the event giving rise to the claim or dispute, request a hearing;
 - (b) In the event of any request for a hearing, the Contract Representative and contractor may meet to attempt to resolve the matter;

- (c) Upon notice of the filing of a hearing request, the General Counsel shall appoint a staff attorney who shall act as a Hearing Officer. All parties to the dispute shall be notified of the hearing date, time and place. All hearings shall be held within thirty (30) business days of the appointment of a Hearing Officer unless extended, for cause, by the General Counsel;
- (d) Within thirty (30) business days after a hearing is conducted, a final written decision shall be rendered by the Hearing Officer; and
- (e) Appeals of the Hearing Officer's decision by the contractor shall be filed in writing with the Commission for consideration by the Commissioners. Appeals to the Commission shall be filed within ten (10) business days of the receipt of the final written decision from the Office of the General Counsel. Thereafter, a decision on the appeal shall be issued in not less than thirty (30) business days.

SOURCE: Final Rulemaking published at 42 DCR 5126, 5132 (September 8, 1995).

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Bar - an action taken by the Commission to exclude a contractor from District contracting and District-approved subcontracting for a reasonable, specified period. A contractor so excluded is "debarred" or "barred."

Claim or Disputes - a written demand or written assertion by the District or a contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Consultant - a firm or individual with knowledge and special abilities not generally available to an agency who renders services of a purely advisory nature relating to governmental functions or agency administration and management.

Consulting Services - services of a purely advisory nature relating to governmental functions, agency administration and management, or program management which are normally provided by persons that are considered to have knowledge and special abilities not generally available within the agency.

Contract Representative - that individual assigned to manage the solicitation, drafting, processing and monitoring of a contract with firms or individual(s) providing services to the Commission.

Contracting Officer - that individual delegated authority by the Chairman to manage and oversee the financial and legal processing of the contract.

Expert - a person or business with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily

competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. An expert may be a person who performs or supervises regular duties and operating functions.

Firm-Fixed Price Contract - a contract wherein the total obligation of the Commission is defined and not subject to change or escalation absent written amendments thereto.

Ineligible - any current or prospective contractor or vender excluded from District contracting or subcontracting, under authority of federal statute or regulation applicable to the District (such as the Davis-Bacon Act, 40 U.S.C. §§276a-276a-7, the Service Contract Act, 41 U.S.C. §§351-358, or the Equal Employment Opportunity Act of 1972, 5 U.S.C. §§5108, 5314 *et seq.*, and 42 U.S.C. §2000e), or excluded under authority of a District statute or regulation.

Negotiated Contracts - all contracts resulting from direct discussions between contractors and the Commission representatives pursuant to §2203 of this chapter.

Purchase Order - a written offer on a standardized form to buy certain supplies, services, or other items from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit.

Small Purchase - a procurement of supplies, services, or other items in an aggregate amount not exceeding the small purchase authority limitations set forth in this chapter.

Solicitation - all RFPs or IFBs except as provided otherwise in this chapter.

Suspension - an action taken by the Commission to disqualify a contractor temporarily from District contracting and District-approved subcontracting. A contractor so disqualified is "suspended."

SOURCE: Final Rulemaking published at 42 DCR 5126, 5134 (September 8, 1995).

